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Paper for the House Committee meeting on 29 March 2019

**Report of the Subcommittee on Public Health and Municipal Services
(Fees) (Amendment) Regulation 2019**

Purpose

This paper reports on the deliberations of the Subcommittee on Public Health and Municipal Services (Fees) (Amendment) Regulation 2019.

Background

2. Hong Kong is facing an aging population. The numbers of deaths and cremations have been rising gradually. According to the Administration's projection based on latest demographic and operational data, the cumulative number of cremations would be around 1.2 million in the coming 20 years (from 2019 to 2038). Assuming full development of all the 24 sites identified for public columbaria under the district-based columbarium development scheme, the Administration will be able to provide about 900 000 new public niches.

3. While continued efforts would be made in identifying more suitable sites for public columbarium projects, the Administration sees a need to optimize the use of existing land resource allocated for public columbaria. The Food and Environmental Hygiene Department ("FEHD") has, for example, been encouraging and facilitating co-location of ashes resulting from the cremation of human remains ("ashes") in public niches (i.e. shared use of niches) by relaxing the definition of "close relative" and allowing the public to place more than two sets of ashes in a standard niche and more than four sets in a large niche with effect from January 2014.

Extendable arrangement for the use of public niches

4. According to the Legislative Council Brief (File Ref.: FHB/F 7/28/20) issued by the Food and Health Bureau and FEHD in February 2019, to cope with the escalating demand for disposal of ashes and to make the most of the new

public niches coming on stream, the Administration proposes to introduce, starting from the next allocation exercise, an extendable arrangement for the use of public niches in that niches will be allocated to applicants subject to an initial deposit period of 20 years, after which the interment may be extended for 10 years recurrently on application and payment of the prevailing prescribed fees. In other words, there is no time limit for the use of an allocated niche, as long as the related persons (i.e. the niche allocatee or nominated representative(s)) apply for extension of the deposit period and pay the prevailing prescribed fee. The extendable arrangement, however, would not affect sitting ashes already interred in niches allocated in the past on a permanent basis.

5. To provide an incentive for co-location of ashes of deceased persons in the same family or with close relationship, the Administration also proposes that the deposit period for extendable niches be given a fresh count of 20 years from the co-location date¹ (regardless of the length of the original deposit term), and the interment may be further extended at 10-year intervals afterwards. If a further set of ashes is added to the niche later, the same new interment schedule will apply and supersede the prevailing interment schedule for occupying the niche (i.e. a fresh count of 20 years from the co-location date of the new set of ashes, followed by extension of the deposit period at 10-year intervals thereafter).

6. If the related persons have not sought extension of interment and removed the ashes from the niches within two years after the expiry date of the deposit period (straddling two cycles of the Ching Ming and Chung Yeung Festivals), or if they cannot be contacted after repeated attempts during the time, FEHD will remove the ashes from the niches and dispose the ashes by means of green burial. A name tag will be set up at FEHD's columbarium facilities in a decent and solemn manner for all deceased whose ashes have been disposed of, as afore-mentioned. The means and location of final disposal of the removed ashes will be properly documented.

Fee proposal to effect the extendable arrangement

7. Section 124I(1)(r) of the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") provides that the Secretary for Food and Health ("SFH") may by regulation provide for the fees and charges payable in connection with the disposal or interment of ashes. Section 8 of the Public Health and Municipal Services (Fees) Regulation (Cap. 132CJ) ("the Regulation") provides that the fee

¹ On an application for deposit of an additional set of ashes in the same niche, an option will be offered to give a fresh count of 20 years deposit period from the co-location date. If the option is not exercised, the new set of ashes may be co-located only for the remaining term of the original deposit period, and the original extension schedule (every 10 years) will apply. The option will have to be exercised at the time of tendering the application for deposit of an additional set of ashes.

payable for a matter relating to a Government columbarium specified in Schedule 6 is the appropriate fee specified in the appropriate Part of that Schedule. The fees now prescribed in Part 2 of Schedule 6 to the Regulation cover only permanent deposit of ashes in public niches and temporary deposit of ashes at a Government crematorium.² Legislative amendments are therefore necessary to prescribe the fees for deposit of ashes in public niches provided by FEHD for a fixed period in order to give effect to the extendable arrangement.

Public Health and Municipal Services (Fees) (Amendment) Regulation 2019 (L.N. 14 of 2019)

8. On 15 February 2019, the Administration published in the Gazette the Public Health and Municipal Services (Fees) (Amendment) Regulation 2019 ("the Amendment Regulation"). The Amendment Regulation is made by SFH under section 124I of PHMSO to amend Schedule 6 to the Regulation to, among others:

- (a) introduce new fees of \$120 per year and \$150 per year for depositing ashes in a standard niche (capable of holding two containers) and a large niche (capable of holding four containers) respectively at a Government crematorium or columbarium for a period stipulated by the Director of Food and Environmental Hygiene ("DFEH") under section 13 of the Cremation and Gardens of Remembrance Regulation (Cap. 132M);
- (b) repeal the current fee levels of \$2,800 and \$3,600 for permanent deposit of ashes respectively in a standard niche and a large niche at a Government crematorium or columbarium, and substitute with a nominal amount of \$1; and
- (c) prescribe a fee of \$140 for depositing an additional set of ashes in a standard niche or a large niche at a Government crematorium or columbarium (which is currently charged as an administrative fee).

9. The Amendment Regulation, which will come into operation on 26 April 2019, was tabled before the Legislative Council on 20 February 2019 for negative vetting.

² The current fees for permanent deposit of ashes in a standard and large public niche are \$2,800 and \$3,600 respectively. The fee for temporary deposit of ashes at a Government crematorium now stands at \$80 per month.

The Subcommittee

10. At the House Committee meeting on 1 March 2019, Members formed a subcommittee to study the Amendment Regulation. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Mr CHAN Hak-kan, the Subcommittee has held one meeting with the Administration.

11. The scrutiny period of the Amendment Regulation has been extended from the Council meeting of 20 March 2019 to that of 17 April 2019 by a resolution of the Council passed at its meeting of 20 March 2019.

Deliberations of the Subcommittee

Implementation of the extendable arrangement and the revised fee schedule

12. Mr CHAN Hak-kan, Ms Alice MAK and Mr Andrew WAN appreciate the rationale behind the Administration's proposal to implement the extendable arrangement for more sustainable use of public niches. Dr Helena WONG, however, strongly opposes to such a policy change. In her view, the extendable arrangement means a complete overhaul of the policies and system for niche allocation. The requirement on the related persons to recurrently apply for extension of interment and pay the prevailing prescribed fees is a very disturbing arrangement to the descendants, let alone imposing a financial burden on them. She has also expressed dissatisfaction that the Administration has not conducted extensive public consultation on the proposed extendable arrangement which, in her view, is controversial and has far-reaching implications.

13. The Administration emphasizes that the extendable arrangement does not rule out perpetual use of public niches upon renewal of interment. At present, the one-off fees for permanent deposit of ashes in a standard and large niche are respectively \$2,800 and \$3,600, and they were set by the two ex-Municipal Councils some 20 years ago. Despite the fact that the current fees are far from being able to recover the full cost in building and operating public columbaria, in a bid to promote better utilization of columbaria facilities through the implementation of the extendable arrangement, the Administration proposes to charge \$2,400 (\$120 per year x 20 years) for an initial deposit period of 20 years in the case of a standard niche and \$3,000 (\$150 per year x 20 years) for the same deposit period in the case of a large niche.

14. On the question of consultation, the Administration advises that it has consulted the Panel on Food Safety and Environmental Hygiene ("the Panel") in February and April 2018. The majority of Panel members are supportive of the

general direction of the proposed extendable arrangement for the use of public niches to be allocated in the future, and no objection has been raised to the Administration proceeding with the relevant legislative amendment to revise the fees. The Panel has subsequently invited members of the public, including the 18 District Councils ("DCs"), to submit written views on the extendable arrangement. All the views received have been forwarded to the Administration for consideration and response. Separately, the Administration has also consulted all 18 DCs or their relevant committees. The majority of them support in principle more sustainable use of land resources for columbarium purposes through introducing extendable niches.

15. Dr Helena WONG has sought information on when the first exercise of niche allocation (to which the extendable arrangement and the revised fee schedule apply) will take place. According to the Administration, two columbarium projects at Wong Nai Chung Road (involving 855 niches) and Tsang Tsui (involving 160 000 niches) respectively are scheduled for completion within 2019. The Administration's current plan is to work out the operational details and logistics arrangements before putting up a certain number of these niches for public allocation after the Amendment Regulation has come into operation.

FEHD's power to remove and dispose of ashes

16. The Legal Adviser to the Subcommittee has made enquiries with the Administration on the legal basis for FEHD's removal of ashes from the niches and disposal of unclaimed ashes by means of green burial, if the related persons have not sought extension of interment and removed the ashes from the niches within two years after the expiry date of the deposit period, or if they cannot be contacted after repeated attempts during the time by various means.

17. The Administration has explained that for removal of ashes from public niches, FEHD relies on the fact that Government columbaria and crematoria are under the management of FEHD and section 13(3), (4) and (5) of the Cremation and Gardens of Remembrance Regulation. Under that section, the condition for depositing ashes at a Government crematorium or columbarium is "upon payment of the prescribed fee" and the period is that "stipulated by the Director of Food and Environmental Hygiene". Hence, if no extension of deposit period is sought and the prescribed fee for extension is not paid, the person to whom a niche is allocated will not be entitled to deposit ashes in the niche upon expiry of the period stipulated by DFEH. The continued deposit of the ashes after the stipulated period will be without permission and will constitute trespass to the land. DFEH may remove the ashes from the niche by consent of the niche applicant. To avoid any possible dispute over the ownership and disposal of the

ashes in which the niche allocatee will have an interest, consent to FEHD's disposal of unclaimed ashes by means of green burial (if no extension of deposit period is sought) will be obtained upon the niche applicant's submission of application for use of a niche. The niche applicant will be required to signify his/her consent on the relevant application form.

18. As regards the disposal of unclaimed ashes by means of green burial, the Administration has advised that section 118(1) of PHMSO stipulates that any person who, without DFEH's written permission, scatters the ashes of any human remains after cremation, otherwise than in a cemetery, shall be guilty of an offence. Further, section 118(3) of PHMSO provides that no permission under subsection (1) shall be granted to any person other than the duly authorized agent of such legal personal representative or next of kin. If the extendable arrangement is to be implemented, when a niche applicant (who is usually the next of kin of the deceased) returns the signed application form, he/she gives consent to FEHD to dispose of any unclaimed ashes by means of green burial as indicated in the application form. Hence, FEHD may be regarded as a "duly authorized agent of such legal personal representative or next of kin" under section 118(3) of PHMSO and can scatter the ashes once DFEH's written permission is obtained.

19. The Legal Adviser to the Subcommittee has asked whether other legislative amendments are required to give effect to the implementation of the extendable arrangement. The Subcommittee has noted that there are express provisions in PHMSO (i.e. sections 118(4), 119 and 119A) on the powers of DFEH and the Chief Executive in Council to remove and dispose of any human remains. The Legal Adviser to the Subcommittee has also asked whether it is necessary to have express provisions on the powers of FEHD to implement the removal and disposal of unclaimed ashes under the extendable arrangement in the light of similar provisions in PHMSO relating to human remains. The Administration considers that the afore-mentioned consent by niche applicants and legal provisions as stated in paragraphs 17 and 18 above will suffice for the purpose of enabling DFEH to implement the removal and disposal of unclaimed ashes under the extendable arrangement. Other express statutory provisions are, therefore, considered not necessary.

Notification arrangements

20. Mr CHAN Hak-kan, Ms Alice MAK and Dr Helena WONG opine that it is important for the Administration to ensure the related persons' awareness of the need to seek niche extension after the 20-year initial interment period or each 10-year extension period. They call on the Administration to introduce measures to facilitate the related persons, particularly those who have migrated

overseas, to apply for extension and to update FEHD of their contact details. In these members' view, with continued advancement in technology, the Administration should explore the use of online platforms for submission of applications for niche extension.

21. The Administration has advised that to provide more flexibility, a niche allocatee will be allowed to nominate up to two representatives (with order of priority indicated) who may apply for extension of interment ("the nomination arrangement"). While it is incumbent upon the related persons to inform FEHD of any change in the contact list or their contact information, the following facilitating measures will be put in place:

- (a) upon consent of the niche allocatees (and their nominated representative(s)) and their provision of an email address, FEHD will create a dedicated webpage for the deceased in the Internet Memorial Service ("IMS") website free of charge;
- (b) the IMS webpage of the deceased will display the expiry date of the deposit period in the front page as a standard feature, and provide a dedicated link to facilitate the related persons to update the contact list or their contact information;
- (c) every five years, FEHD would approach the related persons by Short Message Services ("SMS"), email and/or other appropriate means to remind them to provide any update of the contact details;
- (d) two years prior to expiry of the deposit period, FEHD will make constant efforts to contact the related persons by SMS, email or other appropriate means every six months, and display a pop-up message on the IMS webpage advising on the expiry date of the deposit period until two years after the expiry of the deposit period;
- (e) upon expiry of the deposit period, FEHD will step up efforts to contact the related persons, such as through issuing letters to their last known address, publishing notices in the Government Gazette, newspapers and FEHD's website, and posting notices on relevant niche walls; and
- (f) after the expiry date (straddling two cycles of the Ching Ming and Chung Yeung Festivals), two years would be allowed for the related persons to contact FEHD to seek extension, before proper procedures would be initiated to remove the ashes physically from the niche.

Deceased without close relatives

22. Ms Alice MAK and Mr Andrew WAN have expressed concern whether and how the Administration will adopt facilitating measures for singleton elderly to register their wish as to how they like their ashes to be handled after death. According to the Administration, some non-government organizations ("NGOs") or community bodies provide after-death care services to elderly people without descendants or close relatives, mainly to help them make solemn, dignified choices for peace of mind in the remaining living years. In this vein, matters like counselling, funeral, cremation and final disposal of ashes by green burial are covered. The Administration has touched base with some major NGOs and learned that they would study how to provide extension of interment service for the elderly in need in future. The Administration has also encouraged those NGOs to make best use of the nomination arrangement, i.e. accepting any of the niche allocatee plus two more representatives to apply for extension, in future. The arrangement allows nomination of successors to take the places of the related persons anytime when necessary.

Possible impact on non-government bodies providing columbarium facilities

23. Dr Helena WONG has expressed concern whether the implementation of the extendable arrangement for public niches would have an impact on non-government bodies providing columbarium facilities and services, e.g. the Board of Management of the Chinese Permanent Cemeteries, the Catholic Diocese of Hong Kong and the Hong Kong Chinese Christian Churches Union, in respect of their interment period and arrangement.

24. According to the Administration, some non-government bodies providing niches have also taken new management initiatives to optimize the land allocated to them for burial and columbarium facilities and services. The Hong Kong Chinese Christian Churches Union, for instance, has since 2017 introduced an extendable arrangement for niches in their cemeteries for an initial interment period of 20 years which is extendable for every 10 years subject to renewal and payment. The Administration has advised that the Amendment Regulation, which introduces an extendable arrangement in the allocation of public niches, would not be applicable to niches provided by non-government bodies.

Recommendation

25. Most members of the Subcommittee support the Amendment Regulation. The Subcommittee will not propose any amendment to the Amendment Regulation.

Advice Sought

26. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
27 March 2019

**Subcommittee on Public Health and Municipal Services
(Fees) (Amendment) Regulation 2019**

Membership list

Chairman Hon CHAN Hak-kan, BBS, JP

Members Hon Steven HO Chun-yin, BBS
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, BBS, JP
Hon Andrew WAN Siu-kin
Hon HO Kai-ming

(Total : 7 members)

Clerk Miss Josephine SO

Legal Adviser Mr Alvin CHUI

Date 8 March 2019